

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELVAYARIS ROSA, individually and on behalf of her
daughter L.T.; GREGORIO SANTOS,

Plaintiffs,

-against-

THE UNITED STATES OF AMERICA; U.S.
MARSHAL KEVIN KAMROWSKI; JOHN DOE U.S.
MARSHALS #1-15,

Defendants.

No. 19 Civ. _____

COMPLAINT

Plaintiffs Elvayaris Rosa, individually and on behalf of her daughter L.T., and Gregorio Santos, by and through their attorneys Emery Celli Brinckerhoff & Abady LLP, for their Complaint allege as follows:

“WE CAN DO WHATEVER WE WANT, WE’RE THE FEDS”

1. Elva Rosa is a single mother of two small children, an active member of her school’s PTA, and a supermarket cashier. She lives in the Sotomayor Houses, named for Supreme Court Justice Sonia Sotomayor, who grew up in the same public housing complex in the Bronx.

2. On or about March 2, 2018, a group of United States Marshals surrounded Ms. Rosa’s car, handcuffed her, stole her house keys, invaded her apartment without a warrant, punched, kicked and beat her brother, forced him to sit on a hot radiator, threatened to kill him, terrorized her 4- and 9-year old children, and later threatened to take away her benefits, her apartment, her children, and her freedom.

3. The U.S. Marshals told this family: “We can do whatever we want, we’re the feds.” “We don’t need a warrant.” “Why does your sister have a big-ass bed for her short ass? She doesn’t fucking need it.” “There are 7 of us, 1 of you. Who’s the judge going to believe?” “Guess what, I’m going to fuck you up.” “I should kill you right now.” “You’re lucky I don’t pull out my gun and shoot you.”

4. And most to the point: “We’re the federal government – we can do whatever the fuck we want.”

5. Why did the Marshals terrorize this family? Because they apparently falsely believed that Ms. Rosa or her family knew the whereabouts of a friend who (unknown to the family) was suspected of firearms possession.

6. The Marshals treated this family like dirt under their feet. As a result of the Marshals’ lawlessness, Mr. Santos suffered a debilitating ankle injury. Ms. Rosa became afraid to leave her home. Her four-year old son would pretend to hold a gun and say: “Marshal, put your fucking hands up!” Her daughter was simply terrified.

7. This should not happen in the United States. It would never happen on Park Avenue or in Sutton Place. But when dealing with a low-income, Hispanic family in a housing project in the Bronx, the U.S. Marshals acted like lawless thugs.

8. The façade of the Supreme Court famously says: “Equal Justice Under Law.” But in the former home of a sitting United States Supreme Court Justice, there was no law, and there was no justice.

9. Now it is time these Marshals be held to account. It is time these Marshals learned they cannot do “whatever they want.” It is time for justice.

JURISDICTION AND VENUE

10. This action arises under the Fourth Amendment of the United States Constitution, as well as the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671, *et seq.*

11. The jurisdiction of this Court is predicated upon 28 U.S.C. § 1331 and 28 U.S.C. § 1346(b)(1).

12. The acts complained of occurred within the Southern District of New York, and venue is lodged in this Court pursuant to 28 U.S.C. § 1391(b).

JURY DEMAND

13. Plaintiffs demand a trial by jury in this action for all non-FTCA claims.

PARTIES

14. At all relevant times, Elvayaris Rosa resided at [REDACTED] Bronx, New York, with her 4-year old son and 9-year old daughter, L.T. Ms. Rosa’s home is owned by the New York City Housing Authority, and is part of Sotomayor Houses. Ms. Rosa was a merchandiser for a greeting card company and is an active member of the PTA for her children’s public school. She is now a cashier at a supermarket.

15. L.T. is Ms. Rosa’s 9-year old daughter, and lives with her mother in Bronx, New York.

16. Gregorio Santos is Ms. Rosa’s brother, and lives elsewhere in the Bronx, New York. He often visits Ms. Rosa to help take care of her children, and is himself the father of two children.

17. At all relevant times, the U.S. Marshals Service was an agency within the U.S. Department of Justice, a department of defendant United States of America.

18. At all relevant times, defendants John Doe Marshals 1-15 and U.S. Marshal Kamrowski (collectively, the “Individual Marshals”), acted within the scope of their employment by the U.S. Marshals Service and the United States of America.

STATEMENT OF FACTS

The Marshals Terrorize Ms. Rosa

19. On March 2, 2018, at approximately 1:15 p.m., Elvayaris Rosa was driving with a friend, Disney Abreu, on the way to a shop to install a radio in her car. At a stoplight, Mr. Abreu suddenly exited the vehicle.

20. Shortly thereafter, four to five cars surrounded Ms. Rosa’s vehicle, forcing her to stop.

21. Approximately 15 men, John Does 1-15, exited these cars, some with guns drawn.

22. These men ordered Ms. Rosa to exit her car, searched her body by patting her up and down, and handcuffed her behind her back.

23. John Does 1-15 placed her in the back of a vehicle.

24. Ms. Rosa asked the men why they were detaining her.

25. One John Doe Marshal stated in substance: “Shut the fuck up and get in the car,” and “We’re Marshals. We’re not white and blue. Don’t fuck with us.”

26. Upon information and belief, John Does 1-15 were all United States Marshals.

27. Several John Doe Marshals transported Ms. Rosa to the 43rd Precinct of the New York City Police Department, located at 900 Fteley Avenue, Bronx, New York 10473.

28. For approximately two hours, those John Doe Marshals parked outside the precinct, with Ms. Rosa imprisoned and handcuffed in the back of the car.

29. While she was imprisoned in the car, a number of John Doe Marshals taunted and threatened Ms. Rosa. They said, in substance:

- “We’re the feds, you can’t fuck with us.”
- “You’re a fucked up mother.”
- “You’re a criminal.”
- “He fucks you good that you’re doing this for him?”
- “We’re going to fuck you up if you don’t talk.”

30. Ms. Rosa did not understand what the John Doe Marshals meant or why they had imprisoned her. She was terrified.

31. The John Doe Marshals refused Ms. Rosa’s repeated requests to use the bathroom in the precinct, and instead told her to go in her pants.

32. The John Doe Marshals refused Ms. Rosa’s request that they loosen her painfully tight handcuffs.

33. In the car, one John Doe Marshal showed Ms. Rosa a photograph of Mr. Abreu and asked her to identify him, which she did. The John Doe Marshal then stated (falsely) that Mr. Abreu was accused of trying to murder a police officer.

34. Two John Doe Marshals then drove Ms. Rosa to her building, followed by a number of other cars.

35. For approximately three more hours, those John Doe Marshals imprisoned Ms. Rosa in handcuffs in the backseat of the car.

36. During this time, the John Doe Marshals still refused to let Ms. Rosa use the bathroom.

37. They also refused to loosen her painfully tight handcuffs.

38. John Doe Marshals seized Ms. Rosa's house keys attached to her car keys.

39. They said: "We're going to see who's in your house."

The Marshals Terrorize Mr. Santos and Ms. Rosa's Small Children

40. While the Marshals imprisoned Ms. Rosa in a car outside her apartment, her brother Gregorio Santos, her four-year-old son, and her nine-year-old daughter L.T. were in the apartment, along with Mr. Santos's girlfriend Brianna Colon.

41. At approximately 5:00 p.m., a group of approximately seven male United States Marshals entered Ms. Rosa's apartment with no probable cause, with no basis whatsoever, and with guns drawn.

42. Mr. Santos asked the John Doe Marshals if they had a warrant.

43. One John Doe Marshal replied in substance: "we don't need a warrant."

44. The U.S. Marshals did not have a warrant to enter Ms. Rosa's apartment.

45. The U.S. Marshals did not have a warrant to arrest, search or seize Ms. Rosa, her children, Mr. Santos, anyone in Ms. Rosa's apartment, anything in Ms. Rosa's apartment, or anything belonging to Ms. Rosa or Mr. Santos.

46. At no point did any U.S. Marshal have consent to enter or remain in Ms. Rosa's apartment, to search anywhere, or to seize anything.

47. John Doe Marshals separated Mr. Santos and Ms. Colon from each other, and from the two minor children, placing Mr. Santos in one bedroom, Ms. Colon in the living room, and the children in a different bedroom.

48. John Doe Marshals then interrogated Mr. Santos about the whereabouts of Disney Abreu. When Mr. Santos stated that he didn't know where Mr. Abreu was, one John Doe Marshal stated in substance: "If we ask the kids, will they say that?"

49. Mr. Santos stated to the John Doe Marshal that he could not interrogate the two children outside Mr. Santos's or a lawyer's presence.

50. A John Doe Marshal stated: "Fuck you and your lawyer."

51. Two John Doe Marshals then interrogated Ms. Rosa's 9-year old daughter, L.T.

52. These two, adult male John Doe Marshals were alone with L.T., in a room separate from Mr. Santos and his girlfriend.

53. L.T. was terrified and tearful. She had no idea why unknown armed men had just broken into her home and were terrorizing her family.

54. One John Doe Marshal then returned to Mr. Santos and stated in substance: "The kids just told me the truth. You're a mother fucking liar. I should kill you right now."

55. The John Doe Marshal was of course lying. Ms. Rosa's children of course had no idea where Mr. Abreu was either.

56. The John Doe Marshal then punched Mr. Santos in the neck.

57. The Marshal punched Mr. Santos so hard that he fell to the ground.

58. The John Doe Marshal then repeatedly punched and kicked Mr. Santos in the ribs, arm, and ankle.

59. The John Doe Marshal said in substance: “You better tell me the truth or I’m going to beat you up. The only thing that is going to stop me from killing you is them [the other Marshals].”

60. While this John Doe Marshal violently assaulted Mr. Santos, at least two other John Doe Marshals stood by and watched, laughing.

61. John Doe Marshals then ordered Mr. Santos to sit on a hot radiator.

62. This caused Mr. Santos considerable pain.

63. Mr. Santos asked to stand up.

64. One of the John Doe Marshals responded: “No, I don’t give a fuck.”

65. The John Doe Marshals also said to Mr. Santos, in substance:

- “You’re lucky I don’t pull out my gun and shoot you.”
- “You’re making it worse on yourself. We’re going to lock you up.”
- “If he [Mr. Abreu] is not here, why does your sister have a big-ass bed for her short ass? She doesn’t fucking need it.”
- “We’re the federal government – we can do whatever the fuck we want.”
- “There are 7 of us, 1 of you. Who’s the judge going to believe?”
- “What’s it going to take for you to tell me the truth? Do I need to take my gun out and point it to your head?”

66. Over the course of this incident, John Doe Marshals repeatedly threatened Mr. Santos and made numerous offensive remarks.

67. At another point, a John Doe Marshal said in substance: “You get a reward for telling the truth. You guys are in the projects; you guys are broke so you need the money.”

68. Throughout this episode, Mr. Santos was terrified.

69. At the same time, two other John Doe Marshals questioned Ms. Colon in a separate room stating, “We’re going to take your husband away. He’s a liar. He’s a douchebag.”

70. Throughout this incident, Ms. Rosa’s two minor children were terrified and crying.

71. Suddenly, the supervisor John Doe Marshal stated: “Round up,” and the John Doe Marshals all left the apartment.

72. In sum, over a period of hours, the John Doe Marshals imprisoned and arrested Mr. Santos without any cause whatsoever, terrorized and threatened him, brutalized and beat him, and terrorized his family.

73. At no point did the Marshals charge Mr. Santos or anyone in Ms. Rosa’s apartment with any crime.

The Marshals Threaten Ms. Rosa and her Mother

74. While the John Doe Marshals brutalized Ms. Rosa’s family in her apartment, at least one John Doe Marshal remained in the car with Ms. Rosa.

75. The John Doe Marshal told Ms. Rosa he was going to call child protective services and have her children taken away.

76. The John Doe Marshal told Ms. Rosa he would take away her apartment, which is in public housing.

77. The John Doe Marshal told Ms. Rosa, in substance: “You’re going to do a lot of time.”

78. At or around this time, John Doe Marshals also went to the home of Ms. Rosa’s mother.

79. Ms. Rosa's mother was with some of her grandchildren

80. John Doe Marshals told Ms. Rosa's mother that Ms. Rosa was arrested and was going to prison for ten years.

81. Finally, the John Doe Marshals released Ms. Rosa from the car.

82. The John Doe Marshals initially refused to return Ms. Rosa's car keys, then changed their mind.

83. At her release, the John Doe Marshals gave Ms. Rosa a phone number to call the Marshals if and when she located Mr. Abreu. That number was [REDACTED].

84. According to a press release from the U.S. Marshals Service, the phone number the John Doe Marshals gave to Ms. Rosa belongs to U.S. Marshal Kevin Kamrowski.

85. On information and belief, Kamrowski was one of the marshals who directed, authorized, and organized the lawless conduct set forth above.

86. The John Doe Marshals threatened Ms. Rosa that if she did not locate Mr. Abreu within in one week, "we will put you away for ten years."

87. When Ms. Rosa told them she had no idea how to find Mr. Abreu if he was evading law enforcement, one John Doe Marshal stated in substance, "Guess what, I'm going to fuck you up."

88. The John Doe Marshals refused to take Ms. Rosa back to her car.

89. They said: "I don't care. I should just fuck you up," and "We can do whatever we want, we're the feds."

90. In sum, for many hours, the John Doe Marshals imprisoned and arrested Ms. Rosa without any cause or basis, handcuffed her, terrorized and threatened her, invaded her

home without a warrant or any cause, interrogated her family members, terrorized her children, and brutalized her brother.

91. At no point did the Marshals charge Ms. Rosa with any crime.

The Marshals Terrorize Ms. Rosa and Her Family, Again

92. At approximately 6:45 a.m. on March 5, 2018, Ms. Rosa was home with Mr. Santos, Ms. Colon, and Ms. Rosa's two minor children.

93. A group of approximately five John Doe Marshals arrived at Ms. Rosa's apartment, apparently accompanied by an employee of the New York City Housing Authority.

94. The John Doe Marshals carried a large drill to open the locks on Ms. Rosa's front door.

95. Some of them also had their guns drawn.

96. The John Doe Marshals did not show a warrant or say that they had a warrant.

97. On information and belief, the John Doe Marshals once again did not have a warrant to enter Ms. Rosa's apartment, or to arrest, search, or seize anyone.

98. As one John Doe Marshal entered, L.T. and her little brother started crying.

99. Ms. Rosa said to the marshal in substance: "You see what you're doing?"

100. In response, the John Doe Marshal said in front of L.T., "I don't give a fuck."

101. One John Doe Marshal berated Ms. Rosa for not calling him to identify Mr. Abreu's location, stating in substance: "What's your plan, you want to get locked up?"

102. He threatened to take away her apartment, stating in substance: “This guy’s from housing, he’s going to take your apartment away.”

103. The John Doe Marshal also said in substance: “We’re going to cut off your food stamps. We’re going to take everything away from you.”

104. The John Doe Marshal threatened to return, yet again.

105. Ms. Rosa’s minor children were terrified.

106. For an unknown number of days after March 2, 2018, several John Doe Marshals followed Ms. Rosa, including to a family birthday party.

107. Ms. Rosa was afraid to leave the house and remained indoors to avoid being followed.

The Marshals Damaged This Family

108. As a result of the conduct set forth above, Ms. Rosa suffered injury and pain to her wrists from being tightly handcuffed for many hours, as well as emotional distress, fear, trauma, loss of liberty, loss and/or deprivation of civil rights, humiliation, pain and suffering, mental anguish, and loss of enjoyment of life.

109. As a result of the conduct set forth above, Mr. Santos sustained injuries to his right leg and ankle, including severe and persistent pain, swelling, and a likely fracture. He also sustained bruises, pain, swelling, soreness, and/or injury to areas of his body struck during the assaults described above, including his arms, ribs, posterior, back, neck, leg, and ankle. Mr. Santos also sustained emotional distress, fear, trauma, loss of liberty, loss and/or deprivation of civil rights, humiliation, pain and suffering, mental anguish, and loss of enjoyment of life.

110. As a result of the conduct set forth above, L.T. sustained emotional distress, fear, trauma, loss of liberty, loss and/or deprivation of civil rights, mental anguish, and

loss of enjoyment of life. L.T. became scared to leave the house and go to school. L.T. started a new habit of clutching a rosary and praying frequently for the Marshals not to come back to the house, and for the Marshals not to take her mom away.

111. After the incidents, Ms. Rosa's 4-year old son began to pretend gun play, and would say: "Marshal, put your fucking hands up!"

What Happened to Disney Abreu?

112. What could possibly justify a group of U.S. Marshals acting like a group of lawless thugs, terrorizing an innocent family with no warrant or probable cause? Nothing, of course. But even their predicate for this appalling conduct—the claim that Disney Abreu had killed a police officer—turned out to be a lie.

113. According to public records, *see United States of America v. Abreu*, 18 Cr. 281 (S.D.N.Y.), on or about January 22, 2018, Mr. Abreu, having previously been convicted of a felony, unlawfully possessed a firearm, violating his supervised release. According to the government, Mr. Abreu self-surrendered the day after the government informed him there was a warrant for his arrest. On April 11, 2018, Mr. Abreu was arraigned. On May 1, Mr. Abreu pled guilty to firearms possession. The government recommended a sentence at the bottom of the applicable Sentencing Guidelines Range of 24-30 months, and Mr. Abreu was sentenced to 20 months.

114. This firearm charge against Disney Abreu had nothing whatsoever to do with Ms. Rosa, her brother, or her children. They had no idea he had committed a crime or that anyone was seeking to arrest him, and they did nothing to help him evade law enforcement.

115. No United States Marshal ever apologized to Ms. Rosa or Mr. Santos for the terror the Marshals inflicted on their family.

116. The Individual Marshals acted with a knowing, willful, wanton, grossly reckless, unlawful, unreasonable, unconscionable, and flagrant disregard for plaintiffs' rights, privileges, welfare, and well-being, and are guilty of egregious and gross misconduct toward plaintiffs.

Administrative Filing

117. On June 28, 2018, within two years of the above, all three plaintiffs served upon the U.S. Marshals Service claims, including Standard Form 95 and exhibits.

118. On July 24, 2018, claims counsel for the U.S. Marshals Service confirmed receipt of plaintiffs' claims.

119. More than six months have passed since the submission of plaintiffs' claims. As of the date of this Complaint, the United States has made no attempt to settle or resolve this claim.

FIRST CAUSE OF ACTION

Bivens/Fourth Amendment/All Plaintiffs Against the Individual Marshals

120. Plaintiffs repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

121. By imprisoning, arresting, and detaining plaintiffs without reasonable suspicion, probable cause, a warrant, or any reason whatsoever; terrorizing, interrogating, and threatening them; brutalizing and beating Mr. Santos; handcuffing Ms. Rosa without any basis, and deliberately tight to cause her unnecessary pain; denying Ms. Rosa access to a bathroom; repeatedly invading Ms. Rosa's home without a warrant, any exigency, or any cause whatsoever; failing to intervene to prevent this wrongful and illegal conduct by their fellow Marshals when they had an opportunity to do so; organizing, directing, and conspiring with each other to commit this illegal conduct; and by the other conduct set forth above, the Individual Marshals violated

plaintiffs' rights under the Fourth Amendment of United States Constitution, for which plaintiffs assert a claim and seek damages under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).

122. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiffs sustained the damages hereinbefore alleged.

SECOND CAUSE OF ACTION

FTCA/Assault and Battery/By Rosa and Santos Against the United States

123. Plaintiffs repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

124. All of the Individual Marshals were "investigative or law enforcement officer[s]" of the United States, "empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." As such, the United States is liable, *inter alia*, for their assault, battery, false imprisonment and false arrest of plaintiffs. *See* 28 U.S.C. § 2680(h).

125. By threatening, intimidating, cuffing, seizing, beating, and brutalizing Ms. Rosa and Mr. Santos, and by the other conduct set forth above, the U.S. Marshals, acting within the scope of their employment, committed multiple willful, unlawful, unwarranted, and intentional assaults and batteries upon them.

126. Under the FTCA, as the employer of these U.S. Marshals, the United States is liable for this misconduct.

127. As a direct and proximate result of the misconduct and abuse of authority detailed above, Ms. Rosa and Mr. Santos sustained the damages hereinbefore alleged.

THIRD CAUSE OF ACTION

FTCA/False Arrest and False Imprisonment/
All Plaintiffs Against the United States

128. Plaintiffs repeat and reallege the above paragraphs as if the same were fully set forth at length herein.

129. By imprisoning, arresting, and detaining plaintiffs without reasonable suspicion, probable cause, a warrant, consent, any exigency, or any reason or basis whatsoever, and by the other conduct set forth above, the U.S. Marshals, acting within the scope of their employment, falsely arrested and falsely imprisoned them.

130. Under the FTCA, as the employer of these U.S. Marshals, the United States is liable for this misconduct.

131. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiffs sustained the damages hereinbefore alleged.

FOURTH CAUSE OF ACTION

Negligent hiring/training/disciplining/retention of
Employment Services/All Plaintiffs Against the United States

132. Plaintiffs repeat and reallege the foregoing paragraphs as if the same were fully set forth at length herein.

133. The United States owed a duty of care to plaintiffs to prevent the physical and mental abuse sustained by plaintiffs.

134. Upon information and belief, the United States owed a duty of care to plaintiffs because under the same or similar circumstances a reasonable, prudent and careful person should have anticipated that injury to plaintiffs or to those in a like situation would probably result from this conduct.

135. Upon information and belief, the Individual Marshals were unfit and incompetent for their positions.

136. Upon information and belief, the United States knew or should have known through the exercise of reasonable diligence that the Individual Marshals were dangerous.

137. Upon information and belief, the United States' negligence in hiring, screening, disciplining, training, and retaining the Individual Marshals proximately caused plaintiffs' injuries.

138. Upon information and belief, because of the United States' negligent hiring, screening, disciplining, training, and retention of the Individual Marshals, plaintiffs incurred the injuries hereinbefore mentioned.

FIFTH CAUSE OF ACTION

Trespass/By Rosa Against the United States

139. Plaintiffs repeat and reallege the above paragraphs as if the same were fully set forth at length herein.

140. As a consequence of repeatedly and intentionally entering Ms. Rosa's home without justification or permission, and by the other conduct set forth above, the U.S. Marshals, acting within the scope of their employment, are liable to Ms. Rosa for civil trespass.

141. Under the FTCA, as the employer of these U.S. Marshals, the United States is liable for this misconduct.

142. As a direct and proximate result of the misconduct and abuse of authority detailed above, Ms. Rosa sustained the damages hereinbefore alleged.

SIXTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress/All Plaintiffs Against the United States

143. Plaintiffs repeat and reallege the above paragraphs as if the same were fully set forth at length herein.

144. As set forth above, the actions of the U.S. Marshals in baselessly and sadistically harassing and terrifying plaintiffs and their families were extreme and outrageous. These actions were undertaken with the intent to cause plaintiffs severe emotional distress.

145. Under the FTCA, as the employer of these U.S. Marshals, the United States is liable for this misconduct.

146. As a direct and proximate result of the misconduct and abuse of authority detailed above, plaintiffs sustained the damages hereinbefore alleged.

WHEREFORE, Plaintiffs respectfully request that the Court grant them the following relief:

- A. Awarding compensatory and punitive damages to plaintiffs;
- B. Awarding plaintiffs reasonable costs and attorney's fees pursuant, *inter alia*, to the Equal Access for Justice Act 28 U.S.C. § 2412; and
- C. Awarding such other and further relief as this Court deems just and proper.

Dated: March 20, 2019
New York, New York

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